



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,902	10/03/2005	Christopher Mallet	C036510/0186296	1480

7590 05/04/2009
Robert G Lancaster
Bryan Cave
One Metropolitan Square
211 North Broadway Suite 3600
St Louis, MI 63102

EXAMINER

WEAVER, SUE A

ART UNIT	PAPER NUMBER
----------	--------------

3781

MAIL DATE	DELIVERY MODE
-----------	---------------

05/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/528,902	Applicant(s) MALLET, CHRISTOPHER	
	Examiner Sue A. Weaver	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 80-110 and 114-118 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 80-110 and 114-118 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. This application presents a claim for subject matter not originally claimed or embraced in the statement of the invention. The claims now claim a package with a stack of container bodies and a stack of closures. A supplemental oath or declaration is required under 37 CFR 1.67. The new oath or declaration must properly identify the application of which it is to form a part, preferably by application number and filing date in the body of the oath or declaration. See MPEP §§ 602.01 and 602.02.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the package containing a stack of container bodies and a stack of closures as now claimed in claim 80, a stack of closures with spouts as claimed in claim 94 and the package containing stacked container bodies as now claimed in claim 114 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

Art Unit: 3781

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

Art Unit: 3781

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 80-110 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has impermissibly shifted from disposable nursing containers which have already received several office actions to a package containing a stack of container bodies and a stack of closures. Not only is the package not shown in the drawings perhaps because it wasn't even in the objects of the invention but there is no suggestion of what type of package is preferred. Moreover, while the container bodies or closures might be packaged, there is no discussion or clear support for both stacks together in a single package, as now being claimed. Since there are closures with nipples and closures with spouts it isn't clear whether all three are to be packaged together or if each stack is simply packaged individually to permit the shopper to choose the type of closure to be used with the containers. Furthermore there isn't any discussion of stacking the drinking spout being claimed in claim 94.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 3781

6. Claim 81 and 91 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The claim for each closure being stackable in claim 81 appears to be a double inclusion of a stack of closures in claim 80, as amended.

8. If the closures are in a stack separate from the stack of container bodies and the teat is in the closure as claimed in claim 86, it isn't clear how it can be attached to an end of the container body opposite the closure as claimed in claimed in claim 91.

9. Claims 80, 81, 83, 84, 86, 87 and 114-116 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morash '206 in view of Kornely et al '768, Wells '743 and Morano et al '972, all of record

Note Figures 1 and 2 of Morash showing two stacks of components. Note also Figure 6 with a bottom closure. To have further provided the containers with a plastic cover extending down into the container to seal it and protect it from contamination and provide for easy separation for stacking purposes would have been obvious in view of such teaching by Kornely et al. To have sealed the covers at the rim to provide a hermetic seal would have been obvious in view of such teaching by Wells.

10. Claims 82 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 80 above, and further in view of Lynch '811, of record

To have optionally adhesive to secure the cover would have been obvious in view of such teaching by Lynch at 34,

Art Unit: 3781

11. Claims 85 and 117 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 80 and 114 above, and further in view of Nemeth '715, of record.

To have formed the cover of Polystyrene for clarity would have been obvious in view of such teaching by Nemeth.

12. Claims 88-94, 103-110 and 118, insofar as they are definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 80, 86 and 87 above, and further in view of Williams et al WO'074, of record.

Williams et al teach the various forms of attachment claimed and to have provided Morash with them for a secure closure arrangement would have been obvious.

13. Claims 94, 96, 97, 101 and 102 rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 80 above, and further in view of Verbovsky et al '053, of record.

To have alternately provided the closure with a spout near one edge and a vent for use by children in the manner of Verbovsky et al would have been obvious.

14. Claims 95-102, insofar as they are definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 94 above, and further in view of Haberman '245, of record.

To have alternately formed the spout with a slit and a vent with a slit to prevent leaking in the manner of Haberman would have been obvious.

15. Applicant's arguments with respect to claim 80 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3781

16. It is well-known to individually wrap glasses or cups which can be stacked to retain sterility as often found in hotel rooms and hospitals. Moreover the references all concern known features of packaging which is the current focus of the invention.

Morash already teaches sterile packaging of the stacked containers. Claims 1-79 and 111-113 have been canceled.

17. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents

Art Unit: 3781

P.O. Box 1450

Alexandria, VA 22313-1450

on _____.

(Date)

Typed or printed name of person signing this certificate:

Signature: _____

Registration Number: _____

Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the
United States Patent and Trademark Office, Fax No. () _____ - _____ on
_____.

(Date)

Typed or printed name of person signing this certificate:

Signature: _____

Registration Number: _____

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548 and e mail address is sue.weaver@uspto.gov. The examiner can normally be reached on Tuesday-Friday (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor is Anthony Stashick_. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3781

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sue A. Weaver/

Primary Examiner, Art Unit 3781

sue.weaver@uspto.gov